

Remarks

The application has been amended. In particular, claims 1, 11 and 27 have been amended to recite that the fluid containing a bioactive agent is disposed within the pocket created by the liners and solid segments. New claims 48 and 50 have been added, reciting that the fluid substantially fills the pocket. New claims 49 and 51 have been added, reciting that the fluid is a gel. Support for these amendments can be found, for example, in paragraphs [0034], [0035], [0040], [0077], and in the figures of the present application as published. These amendments do not introduce new matter. In addition, it is respectfully submitted that additional claim fees are not required, in view of the previous cancellation of claims 28-47.

Claim Rejections Under 35 U.S.C. §102(b)

The Examiner has rejected claims 1-22, and 27 under 35 U.S.C. §102(b), as allegedly being anticipated by U.S. Patent No. 6,139,573 to Sogard, et al. (hereinafter "Sogard"). The Examiner alleges that Sogard discloses a bioactive agent located in, and thus filling a pocket adjacent to the solid segments of an intermediate structural member, and cites column 9, lines 25-37 of Sogard in this regard. However, Sogard fails to disclose or suggest a fluid containing bioactive agents in its device, as presently claimed.

With respect to bioactive agents, Sogard discloses at column 9, lines 25-37 that bioeffecting agents may be coated on, or placed into the pores of, the polymeric cover or conformal layer, or on the stent. While this may tangentially allow some bioeffecting agents to find their way into the pocket, Sogard does not disclose or suggest that a fluid containing bioactive agents may be disposed within the pocket defined between the stent elements and the surrounding layers.

Even if a bioactive agent could be coated on the portion of the cover, layer or stent within the pocket of Sogard's device, it certainly does not constitute a fluid containing the

bioactive agents within the pocket as specifically set forth in the present claims. Therefore, there is nothing in Sogard which would teach or suggest a fluid containing a bioactive agent.

Amended independent claims 1 and 27 provide a device for delivery of bioactive agents associated therewith to a site of implantation of the device. The device includes a first polymeric liner, a second polymeric liner, and an intermediate structural member defined by solid segments and openings therebetween. The first polymeric liner is bonded to the second polymeric liner through the openings so as to form a pocket adjacent to the solid segments, the pocket being defined by the first and second liners and the solid segments. The device further includes a fluid containing a bioactive agent disposed within the pocket.

Sogard fails to disclose, teach or suggest a fluid containing a bioactive agent in a pocket, as set forth in the claim. Furthermore, there is no suggestion or motivation in Sogard to modify the invention to include a fluid containing bioactive agents. This is evident in that Sogard desires an air gap in the pocket to promote neointimal growth. (Col. 12, lines 39-53).

The claims of the present invention are deemed to be patentably distinct over Sogard and it is respectfully submitted that the rejection over Sogard has been overcome.

Claim Rejections Under 35 U.S.C. §103 (a)

The Examiner has also rejected claims 23-26 under 35 U.S.C. §103(a) as allegedly being unpatentable over Sogard, et al. in view of U.S. Patent No. 6,428,571 to Lentz, et al. The Examiner relies upon the Lentz reference for its disclosure with respect to manufacturing ePTFE with internodal distances of less than or greater than 40 microns to achieve various results.

Claims 23-26 depend directly or indirectly on claim 1. As set forth above, claim 1 is patentably distinct over the primary reference. The Lentz reference fails to fill the deficiencies

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of the primary reference. Therefore, as dependent claims, claims 23-26 are similarly patentable. It is respectfully submitted that claims 23-26 are patentable over Sogard and Lentz, each taken alone or in combination.

New Claims 48-51

It is noted that new claims 48 through 51 have been added. These claims are dependent on the currently amended independent claims. It is respectfully submitted that each of claims 48-51 further provides an independent basis for allowance beyond that discussed above.

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Summary

Applicant has responded in full to the present final Office Action. It is believed that all of the claims of the present invention are patentable over the cited references, either alone or in combination. Favorable action thereon is respectfully solicited.

The Commissioner is hereby authorized to charge payment of any additional fees associated with this communication, or credit any overpayment, to Deposit Account No. 08-2461. Such authorization includes authorization to charge fees for extensions of time, if any, under 37 C.F.R. § 1.17 and also should be treated as a constructive petition for an extension of time in this reply or any future reply pursuant to 37 C.F.R. § 1.136.

Should the Examiner have any questions or comments concerning this Response, the Examiner is respectfully invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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